

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4091 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHILALBHAI UKABHAI BORAD

Versus

ELECTION OFFICER AND THE DY COLLECTOR OF AMRELI

Appearance:

MR JAYANT PATEL for Petitioners

MR. PRASHANT G. DESAI, GOVERNMENT PLEADER for
respondent Nos. 1 and 2

MR BM MANGUKIYA for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 14/07/97

ORAL JUDGEMENT

The petitioners seek to challenge the rejection of their nomination papers by the first respondent and pray for a declaration that their nomination forms were legal and valid for contesting the election of the members of the Managing Committee of Amreli District Central Co-operative Bank Limited. It is also prayed that the order at Annexure-H by which respondent No. 4

was declared elected as uncontested candidate on 5.6.1997 should be set aside.

The election programme was published on 14.5.1997 as per which nomination forms were to be submitted by 26.5.1997. However, on 30.5.1997 the Returning Officer issued a notification for rescheduling the dates of election. As per that order since the original nomination papers were destroyed by a mob on 28.5.1997 the candidates were asked to fill in their nomination forms again with the same proposer and seconder whose names were noted down in the register and the date for submitting such nomination papers was extended to 2.6.1997. The names of the candidates who were declared uncontested were announced on 5.6.1997 and they included the name of the respondent No. 4 from Dhari Constituency.

The learned counsel for the petitioners strongly contended that the Collector could not have, while exercising his powers to change the dates, issued a direction requiring the candidates to retain the names of the original proposer and seconder while submitting the fresh filled in nomination forms. It was submitted that Rule 16(c) only empowers the Collector to modify the order announcing the election schedule and does not authorise him to issue any such direction. It was submitted that it was not incumbent upon the petitioners to approach the election Tribunal under Section 145U of the said Act because the very right of the petitioners to contest the election was denied by rejection of their nomination papers. Reliance was placed on the decision of this court in KALIDAS VS. RETURNING OFFICER reported in 22 G.L.R. 1050 in support of this submission. In that case the court held that on the facts and circumstances of the case the petitioner was justified in approaching the High Court without resorting to the alternate remedy of approaching the Tribunal under the Panchayats Act. Reliance was also placed on the decision of this court in NAVUBA VS. RETURNING OFFICER reported in 23(2) G.L.R. 397 for contending that the petitioners should not be relegated to the alternative remedy under the Act. In that case the court had held that remedy by way of election petition under Section 24 of the Gujarat Panchayats Act 1992 was in the facts of the case not available to the petitioners and therefore he could not be relegated to the alternative remedy. Reliance was also placed on the decision in LAJUBEN JERAMBHAI BHIL & ORS. VS. AHMEDABAD MUNICIPAL CORPORATION reported in 1993(1) GCD 433 in which it was held that question of rejection of nomination papers was such a question that

if it could be resolved in proper time without disturbing election process, the court should try to see that it is resolved so that on that question the entire election not only for one seat but for all seats of that ward are not put into jeopardy and did not get set aside.

In the present case the petitioners have questioned the rejection of their nomination papers that they had filled their original nomination papers with names of certain proposers and seconders. It appears that those nomination forms were noted down in the Register maintained by the Returning Officer. Due to commotion on 28.5.1997 the original nomination papers were destroyed. A general direction was therefore issued by the Returning Officer while changing the dates of nominations requiring those who had already filed the nominations to file nomination forms again with the same proposer and seconder whose names were already noted down in the register. The nominations of the petitioners came to be rejected and the uncontested candidates were declared elected as per the order at Annexure-H to the petition made on 5.6.1997.

Under Section 145U of the said Act it is provided that notwithstanding anything contained in Section 96 or any other provisions of the Gujarat Co-operative Societies Act, any dispute relating to election shall be referred to the Tribunal. The grounds on which the Tribunal can declare election to be void are narrated in Rule 82 of the Co-operative Societies Election Committee Rule 1982 and improper rejection of nomination papers is a ground enumerated in clause (c) of Rule 82. Even non-compliance with the provisions of the Act or Rules made thereunder is a ground under clause (d)(iv) for declaring the election of the return candidate to be void when the result of the election, in so far as it concerns such returned candidate, has been materially affected. It is therefore clear that the nature of controversy which is sought to be raised in this petition on the basis of improper rejection of nomination papers squarely falls within Rule 82 of the said Election Rules and it would be for the Tribunal to decide such disputes under Section 145U of the said Act.

The decisions cited by the learned counsel cannot help the petitioners for they do not lay down any universal rule that in all cases where the nominations are improperly rejected the High Court should exercise its writ powers under Article 226 of the Constitution of India. In most of the election disputes such grounds for rejection of nomination papers would arise and it would

be startling to hold that in all cases where nomination papers are rejected the aggrieved party would have a right to approach this court for invoking its extraordinary powers under Article 226 of the Constitution. The decisions cited by the learned counsel do not at all lay down that in case where nomination papers are rejected and thereby right to contest election is denied the High Court must necessarily interject under Article 226. That sort of eclipsing the Election Tribunal can never be contemplated. The learned counsel for the petitioners has brought to my notice the order admitting Special Civil Application No. 3988 of 1997 in which interim relief was granted. That was a petition which was filed before declaration of the election and the observations in the interim order made thereunder cannot bind this court. This petition is therefore rejected. Notice is discharged with no order as to costs. Ad-interim relief stands vacated. At this stage the learned counsel for the petitioners submits that the ad-interim relief which is hiterto operative may be continued. The respondent No. 4 is declared elected uncontested with other uncontested candidates. There is therefore, absolutely no reason why the candidates who are declared elected uncontested should be restrained from functioning so long as their election is not set aside.

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